of Chief Justice Cockburn cited by McCardie J. in an address delivered in the Middle Temple :—

"My noble and learned friend Lord Brougham, . . . said that an advocate should be fearless in carrying out the interests of his client, but I couple that with this qualification and this restriction, that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interests of his clients *per fas* and not *per nefas*. It is his duty to the utmost of his power to seek to reconcile the interests he is bound to maintain and the duty it is incumbent upon him to discharge with the eternal and immutable interests of truth and justice".

The advocate's duty to the Court is perhaps more difficult to define but it has nevertheless been well expressed by an eminent Law Lord, Lord Tomlin in an address to the Canadian Bar Association in these words :—

"There is, besides, the advocate's obligation to the Court owed by reason of his being engaged in assisting the Court properly to perform its functions. It is an obligation of frankness and candour founding that confidence reposed by the Bench in the Bar which is the most effective of all accelerators of the quick flow of justice. By virtue of this obligation the advocate must with regard to facts be careful to display accuracy in his description of the materials before the Court, while presenting them in the light which seems to him most favourable to his client.

The advocate's obligation of disclosure in matters of law has not always been so clear. At any rate it can, I think, be said today that it is the duty of the advocate to call the attention of the court to any case or statute which is clearly against him. This doctrine has recently received support from the words of a distinguished member of the House of Lords. It satisfies conscience and is in accordance with the view of the advocate's position which I have already indicated."

These, then, are the two principles laid down by Chief Justice Cockburn and Lord Tomlin for the assistance of both the Bench and the Bar in dealing with the problems which arise from the double aspect of an advocate's duty; they are indeed two lamps of advocacy which both illuminate the difficulties and at the same time provide a safe and sure guide to their solution.

Order accordingly.

Solicitors : *Sisson & Delay; Donaldson & Burkinshaw.*

YEE CHANG & CO. LTD. v. N.V. KONINKLIJKE PAKETVAART MAATSCHAPPIJ

[O. C. J. (Whyatt C.J.) June 20, 1958]

[Singapore — Suit No. 1022 of 1957]

Practice and Procedure — Action for damages for breach of contract — Agreement for compromise — Repudiation by defendants — Motion by plaintiffs for judgment and costs — Civil Law Ordinance (Cap 24), s. 3(h) — Jurisdiction.

Advocate and Solicitor — Etiquette — Right of Court to supervise the conduct of its Solicitors — Duty of a Solicitor to conduct litigation with due propriety.

Where a valid compromise in a pending litigation is arrived at between the parties to the suit, the terms of such compromise can be embodied in the judgment and enforced. No separate action, based on the terms of the compromise, is necessary unless the parties merely announce a settlement but do not ask for a Court Order either to enforce the terms of settlement or to stay proceedings.

The Court has a right and duty to supervise the conduct of its Solicitors, and visit with penalties any conduct of a Solicitor which is of such a nature as to tend to defeat justice in the very cause in which he is engaged professionally.

A Solicitor owes a duty to the Court to conduct litigation with due propriety and to assist in promoting in his own sphere the cause of justice. If, therefore, a Solicitor becomes aware in the course of proceedings that his client is obstructing the interest of justice, it is his duty to advise his client as to the conduct which he ought to follow and if the client still persists in his wrong conduct, he should decline to act for him further.

Cases referred to :—

(1) *Myers v. Elman,* (1940) A.C. 282.

(2) *Edwards v. Edwards,* (1958) 2 W.L.R. 956; (1958) 3 All E.R. 179.

(3) *Eden v. Naish,* 7 Ch. D. 781.

(4) *Hakes v. Hodgkins,* unreported.

(5) *Scully v. Dundonald,* 8 Ch. D. 658.

(6) *Green v. Rozen,* (1955) 2 All E.R. 797.

(7) *Graves v. Graves,* 67 L.T. 420.

MOTION.

G. S. Hill for the plaintiffs.

C. H. Smith for the defendants.

The facts and arguments sufficiently appear from the judgment.

Whyatt C.J. : — This motion by the plaintiffs, Yee Chang & Co. Ltd. against the defendants, the Koninklijke Paketvaart Maatschappij, for judgment for the sum of $5,379.21 and costs raises important questions relating to the enforcement of a compromise in a pending suit and to the duty of solicitors, as officers of the Court, to conduct litigation with due propriety.

On the 20th August 1957 the plaintiffs issued a writ against the defendants claiming damages for breach of contract in and about the carriage of bales of rubber by two of their vessels, the S. S. Camphuys and the S. S. Van Riemsdijk. On the 18th December 1957, the plaintiffs delivered a statement of claim in which they quantified their damage at $11,953.80 and on the 11th January 1958 the defendants delivered a defence denying liability for the whole amount of the claim. However on the 6th March 1958, the defendants' solicitors enquired from the plaintiffs' solicitors whether the plaintiffs would be prepared to accept 30% of their claim in settlement, each side paying its own costs. The plaintiffs' solicitors wrote to the defendants' solicitors on the 10th March, stating that

their clients did not consider the offer was a reasonable one and that they were not prepared to accept anything less than 80% of the amount claimed. The letter concluded with this paragraph which in view of subsequent happenings, is of great importance :—

"In order that we may be quite clear on the point would you kindly confirm that your offer of settlement relates to the full amount of our clients' claim as set out in their statement of claim?"

On the 28th March the defendants' solicitors replied stating that their clients were not prepared to settle for 80% of the amount claimed. This letter also had a concluding paragraph which is of great importance : it reads as follows :—

"In an effort to settle this matter we have obtained instructions to offer you 45% of your clients' claim, each side to pay its own costs, that is to say, 45% of the sum of $11,953.80."

On the 2nd May the plaintiffs' solicitors replied to the defendants' solicitors as follows :—

"We . . . now have our clients' instructions to accept your clients' offer of 45% of our clients' claim, each side to pay its own costs, that is to say 45% of the sum of $11,953.80. We should be obliged if you could let us have your cheque for this sum at your earliest convenience."

Thus on the 2nd May 1958 the solicitors for the parties with the full authority of their clients, reached a clear-cut agreement to settle this claim for 45% of $11,953.80, that is, for the sum of $5,379.21.

It might be thought therefore that the parties and their respective solicitors had reached a point where it could safely be said that all differences arising in the litigation had been settled. But I regret to say that it turned out to be quite otherwise. Within a few days of the settlement, namely, on the 7th May, the defendants' solicitors wrote to the plaintiffs' solicitors a letter which began with these words, "We thank you for your letter informing us that your clients are now prepared to settle on the 45% basis." The expression "settle on the 45% basis" was a new turn of phrase; previously the expression used by the solicitors on both sides had been "45% of the claim, that is to say, 45% of the sum of $11,953.80." The reason for adopting the new expression is apparent from the next sentence in the letter which reads : "However our clients point out that according to their records the claim of $11,953.80 is not correct." The letter then gave reasons why the defendants considered the figure should be $7,446.40 instead of $11,953.80 and concluded, "Consequently in view of the above, our clients are only prepared to base a claim on the sum of $7,446.40. On receipt of your confirmation that the key sum is $7,446.40 our clients will furnish us with a cheque for 45% of that sum in your favour in settlement." Thus, astonishing as it may seem, five days after the solicitors for the defendants had reached a clear-cut agreement with the solicitors for the plaintiffs to settle this litigation for 45% of $11,953.80, they were writing on behalf of their clients to repudiate it.

The solicitors' correspondence continued back and forth for three weeks, the defendants' solicitors on the one hand advancing various contentions on behalf of the defendants in an attempt to show that the settlement should be for 45% of $7,446.40 and not 45% of $11,953.80; the plaintiffs' solicitors, on the other hand, answering these errors and at the same time, insisting firmly and with perfect propriety, that the defendants were bound by the settlement to pay 45% of $11,953.80 and adding that the plaintiffs intended to hold the defendants to their bargain. Finally, on the 29th May, the plaintiffs' solicitors wrote to the defendants' solicitors saying that they had instructions to apply for judgment and unless they received a cheque by return they would serve the necessary papers on the defendants' solicitors without further notice. As no cheque was received by return, the plaintiffs' solicitors filed a notice of motion on the 31st May. Two days later the defendants paid up. The plaintiffs' solicitors acknowledged the receipt of the cheque but pointed out that they were entitled to the costs incurred in connection with the filing of the necessary papers for judgment. The defendants' solicitors replied on the 3rd June refusing to pay these costs, and hence this motion comes before me to determine whether the plaintiffs are entitled to their costs.

At the hearing on the 6th June counsel for the defendants took the point that the plaintiffs had adopted a wrong procedure in moving for judgment for the sum of $5,379.21, (that is, 45% of $11,953.80). He contended they should have brought a fresh action for $5,379.21 on the compromise agreement and that in the circumstances there was no jurisdiction to order the defendants to pay the costs of the motion. The hearing was adjourned until the 9th June to allow this point of law to be argued but before the adjournment I informed counsel for the defendants that the correspondence emanating from the defendants' solicitors after the date of the compromise agreement had created a very unfavourable impression on me. I added that when the hearing was resumed, I desired to be furnished with all the information bearing on the conduct of the parties and of their solicitors after the date of the settlement and that I would then hear counsel, not only on the question of jurisdiction and costs, but also on the question whether the proceedings

subsequent to the settlement of the 2nd May had been conducted with due propriety.

At the resumed hearing, counsel for the defendants supplied the Court with copies of the letters which had passed between the defendants and their solicitors after the settlement, stating that he did so with the consent of the defendants. Counsel for the defendants was given an opportunity of making submissions and offering explanations with regard to the correspondence, but I regret to say the unfavourable impression created at the first hearing was not removed. The correspondence between the defendants' solicitors and their clients began quite properly with a request for a cheque for 45% of $11,953.80 so there can be no doubt that the defendants' solicitors understood the terms of the settlement. The defendants replied on the 6th May that they were very pleased that the matter had been settled on a "45% basis" but raised the contention that the amount should be 45% of $7,446.40 and not 45% of $11,953.80. The defendants' solicitors acknowledged this letter, saying they would take up the amount of the claim with the plaintiffs' solicitors in accordance with the defendants' instructions. A few days later the defendants' solicitors wrote again to their clients, enclosing a copy of a letter from the plaintiffs' solicitors and adding "it is correct that the claim against you which is the subject of Suit No. 1022 of 1957 is for $11,953.80." The defendants replied to this letter, repeating their contentions that the settlement should be based on the figure of $7,446.40 and the defendants' solicitors adopted these contentions in a further letter to the plaintiffs' solicitors. The latter replied with a letter which concluded: "The above is intended for your assistance in clarifying the matter but we must repeat that we are not prepared to agree to any alteration in the agreement which has already been reached between us ...". The defendants' solicitors merely passed on this letter to their clients without comment. The defendants once again replied, contending that the amount of the claim was incorrect and once more the defendants' solicitors passed on the substance of the letter to the plaintiffs' solicitors; they did, however, when acknowledging their clients' letter, say on the 20th May for the first time, that they thought "the insurance company concerned" would have a very strong case if they endeavoured to hold them to their bargain, and then added, prophetically, "it looks as though this is the course it will adopt." Eventually on the 28th May the plaintiffs' solicitors wrote to the defendants' solicitors saying that unless they received a cheque by return they would serve the necessary papers on them without further notice. The defendants' solicitors passed on a copy of this letter to their clients on the 29th May, adding that they felt the plaintiffs were in a very strong position and that the amount of the settlement should be paid.

Thus it will be seen that although it was clear beyond argument that the defendants should pay 45% of $11,953.80 under the terms of the settlement, the defendants' solicitors continued for several weeks after the settlement to write letters on their behalf resisting the plaintiffs' solicitors' request for payment before eventually advising their clients on the 29th May that they should pay the amount agreed under the settlement. The inevitable consequence was to occasion unnecessary costs and to postpone payment of the money which the defendants' solicitors well knew was lawfully due under the settlement which they themselves had negotiated.

It has been said by Lord Wright in *Myers v. Elman*[1] at page 319, that the Court has a right and a duty to supervise the conduct of its solicitors and the Court would be failing in the discharge of that duty if it passed over the conduct of the defendants' solicitors in this litigation in silence. It has been laid down by the House of Lords in *Myers v. Elman*[1], *supra* that a solicitor owes a duty to the Court to conduct litigation with due propriety and to assist in promoting in his own sphere the cause of justice. If, therefore, a solicitor becomes aware in the course of proceedings that his client is obstructing the interests of justice, it is his duty to advise his client as to the conduct which he ought to follow and if the client still persists in his wrong conduct, he should decline to act for him further. In the present cast the defendants' solicitors knew when they received their clients' letter of the 6th May that their clients were adopting an untenable attitude and thereby obstructing the interests of justice but they nevertheless helped them to maintain this attitude by the letters they wrote on their behalf during the following weeks. It was not until the 29th May, when the plaintiffs' solicitors delivered an ultimatum, that they wrote to their clients advising them to pay the amount of the settlement. In my view the defendants' solicitors should have given that advice immediately after receiving their clients' letter of the 6th May refusing to pay the amount of the settlement and if their clients had refused to accept their advice, they should then have informed the plaintiffs' solicitors of their difficulties, and if their clients persisted in their wrong attitude, they should have refused to accept further instructions from them.

The position would, of course, have been different if there had been any ground for suggesting that the settlement was not clear in its terms or for some

reason was not binding on the defendants. The right and duty of a solicitor to act for a client until it becomes clear that his client's case is untenable is well illustrated by the recent case of *Edwards v. Edwards*[2] reported in *The Times Newspaper* of the 28th March 1958. In that case Mr. Justice Sachs held that it should have been clear to the solicitor after discovery that his client's application could not succeed and he therefore made an order, making the solicitor personally liable for the costs from a date subsequent to discovery but declined to make him liable for the costs for an earlier period prior to discovery when it was not clear that the application must fail. But in the present case there was never any room for doubt at any stage of the proceedings subsequent to the settlement of the 2nd May that the defendants were bound to pay the amount agreed under the settlement and by their conduct of the litigation after the settlement, the defendants' solicitors caused unnecessary costs to be incurred and needlessly prolonged these proceedings. It is no answer to say, as counsel for the defendants contended before me, that the defendants' solicitors were merely passing on their clients' views. This argument completely fails to recognise that solicitors have a double duty, a duty to the Court as well as a duty to their clients, and it is inconsistent with their duty to the Court, as officers of the Court, to accept instructions from their clients when it is clear beyond a peradventure, as it was in the present case, that by so doing they will be obstructing the interests of justice.

I should perhaps add, to avoid any misunderstanding, that the behaviour of the defendants' solicitors in this case does not involve personal turpitude; it is limited to a failure to appreciate the nature and scope of their duty, as officers of the Court, to conduct this litigation with due propriety.

It remains to consider the question of law raised by the defendants, namely, that the plaintiffs, in moving for summary judgment, have adopted a wrong procedure and therefore the Court has no jurisdiction to award them the costs of this motion. Before dealing with the legal authorities on this point, I should perhaps mention that at the resumed hearing of the motion, the claims manager of the defendant company was available to give evidence in amplification of the correspondence. I need not refer in detail to his evidence except to say that he did not seek to question that the defendants' solicitors had the defendants' authority to make this settlement and he agreed that under the terms of the settlement they had always been liable to pay 45% of $11,953.80. He was asked by the Court why in those circumstances the defendants were seeking to make the plaintiffs pay the costs of proceedings instituted to make them pay that which they now admitted they ought to have paid weeks ago to which he lamely replied that he could not answer the question. It is clear therefore that, whatever the legal validity of the defendants' arguments on the question of costs, there is not a scintilla of merit in their case.

Briefly, the defendants' contention on the law is that, after a settlement had been made on the 2nd May, the plaintiffs should have abandoned the present proceedings and issued a fresh writ claiming the amount of the settlement in an entirely new action. The plaintiffs, on the other hand, point to section 24(7) of the United Kingdom Judicature Act 1873, reproduced almost verbatim in section 3(h) of the Singapore Civil Law Ordinance, which provides that the Court shall grant all such remedies whatsoever as any of the parties may appear to be entitled to in respect of every claim properly brought before them in a cause or matter, so that as far as possible all multiplicity of legal proceedings may be avoided. They maintain that if they are required to institute a fresh action for $5,379.21, instead of moving for summary judgment in the present proceedings, they will be multiplying proceedings and thus violating the declared intention of the legislature as set out in section 3(h) of the Civil Law Ordinance. In support of this view counsel for the plaintiffs cited the case of *Eden v. Naish*[3]. That was a case in which the parties to an action entered into an agreement to compromise the action on the terms that the defendants should pay a certain sum to the plaintiff. Subsequently the plaintiff repudiated the agreement and stated that he proposed to proceed with the action whereupon the defendants took out a summons to stay further proceedings on the terms of the compromise agreement. The plaintiff resisted the summons on the ground that the proper procedure was for the defendants to bring a separate action to enforce the compromise agreement. The argument was rejected by Hall V-C. on the ground that since the Judicature Act 1873 the Court had jurisdiction to deal in those proceedings with issues arising on the compromise agreement and agreed with a decision of the Master of the Rolls in the unreported case of *Hakes v. Hodgkins*[4], where the Master of the Rolls held that since the Act of 1873, the Court had full jurisdiction, where parties entered into an agreement to compromise pending proceedings, to order, upon summons in those proceedings, that the compromise agreement should be carried into effect.

These two cases, unless they have been subsequently overruled, clearly establish that it is not necessary to institute a fresh action to enforce an agreement of compromise in a pending suit. So far from being overruled, they were expressly approved in *Scully v. Dundonald*[5] where, Malins V-C. expressed himself thus: "If I had to decide this ... I should follow the decision of the Master of the Rolls and Vice-Chancellor Hall in the case ... of *Eden v. Naish*[3] where the Vice-Chancellor followed the decision of the Master of the Rolls in *Hakes v. Hodgkins*[4]. There the Master of the Rolls decided, and in *Eden v. Naish*[3] Vice-Chancellor Hall decided, that where there is a compromise in an existing suit, the terms of that compromise can be enforced in the suit, without commencing another action to enforce the terms of the compromise." This *dictum* was approved, if not expressly at least by implication, when the Court of Appeal consisting of Jessel, M.R. and Cotton L.J. and Thesiger L.J., considered the case on appeal and made an order enforcing the compromise, notwithstanding that it was a compromise of an action in the Common Pleas and the motion to enforce it had been moved in the Chancery Division.

Counsel for the defendants, in answer to this weight of authority, relied upon two decisions of Courts of first instance; *Green v. Rozen*[6] and *Graves v. Graves*[7]. In the former case Slade J. was informed by counsel for the plaintiff when the action was called on that the action had been settled but the parties did not ask for a Court order either to enforce the terms of the settlement or to stay proceedings. Subsequently when one of the parties defaulted in carrying out the terms of the settlement, an application was made to Slade J. for judgment for the amount in default but the learned Judge held that he had no jurisdiction to make such an order as the original cause of action had been superseded by the new agreement and the injured party's remedy therefore was to sue on that agreement. It is to be observed that in that case, the parties, after compromising the suit, appeared by their counsel before the Court and did not ask for an order of the Court. In these circumstances, the terms of the compromise together with the fact that the parties appeared before the Court without asking for a Court order, were interpreted to mean that the parties had agreed to substitute this new agreement for the original cause of action, or, as the learned Judge expressed it, the original cause of action had been superseded and the Court had no further jurisdiction in respect of it. The case is, therefore, distinguishable from the decision of the Court of Appeal in *Hakes v. Hodgkins*[4], *supra* and *Scully v. Dundonald*[5], *supra*, where the parties did not go before the Court to announce a settlement and agree not to ask for a Court order.

In the case of *Graves v. Graves*[7], *supra*, an action brought by executors was compromised on terms, one of which was that the plaintiffs should pay the defendant an annuity of £700. Subsequently the defendant moved to make the terms of the compromise a rule of court but Barnes J. dismissing the motion held that he had no jurisdiction to make the order inasmuch as the terms of the compromise did not expressly provide that the terms should be made a rule of court and the suit was at an end. It was contended on behalf of the plaintiffs that in this case, as in *Green v. Rozen*[6], *supra*, the parties had been before the court to announce a settlement without asking for court order, and therefore the case was distinguishable on the same grounds as *Green v. Rozen*[6], *supra*, but counsel for the plaintiffs admitted that the report was not altogether clear on this point. It is, however, important to notice that the report of the argument of counsel who opposed the motion contains the following statement: "When a suit has been discontinued, nothing further can be done in that suit." In addition, it should be noted that the Annual Practice 1958 at page 594 comments on *Graves v. Graves*[7] in these terms: "If by the terms of a compromise an action is discontinued, a motion cannot afterwards be made to make the compromise a Rule of Court, for there is nothing upon which the Court can lay its hand to enforce the compromise;" and again at page 2008: "When an action has been discontinued in pursuance of the terms of the compromise, such compromise cannot be made an order". Leaving aside, therefore, the question whether the parties went before the Court to announce the terms of the compromise, it seems clear that one of the terms of the compromise was that the action should be discontinued and that in pursuance of that term,

the action was in fact, discontinued. This case, therefore, is very different from the two Court of Appeal decisions relied upon by the plaintiffs as there was no suggestion in either of those cases that the original action had been discontinued pursuant to the terms of the compromise. It follows in my opinion that the defendants have failed to rebut the weight of authority relied upon by the plaintiffs in support of the procedure they have adopted in this case. The principle was stated with clarity and emphasis by Vice-Chancellor Malins in *Scully v. Dundonald*[5], *supra*, in these words: "Wherever parties enter into an agreement to compromise a suit pending before me I shall consider it pure matter of course that an order shall be made in that suit to enforce the compromise." I respectfully adopt that statement of the law as applicable to the facts of this case and hold that the plaintiffs can, as pure matter of course, obtain an order in this suit for $5,379.21. It follows that the plaintiffs are entitled to the costs of this motion and there will be judgment accordingly.

Judgment for the plaintiffs.

Solicitors: *Rodyk & Davidson; Donaldson & Burkinshaw.*

P. R. PANICKAR v. CHWEE MAY KWONG & ANOR.

[C. A. (Whyatt C.J., Thomson C.J. (F.M.) and Knight J.) February 8, 1957]

[Singapore — Civil Appeal No. 26 of 1956]

Damages — Negligence — Fatal accident — Loss of expectation of life — Principle to be followed in assessing damages to family of deceased — Civil Law Ordinance (Cap. 24), ss. 7 & 12.

In assessing damages to the family of a person for loss occasioned by his death under section 12 of the Civil Law Ordinance (Cap. 24) the starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

[Editorial Note: In Lim Joo Chiang v. Lim Siew Choo & Anor., (1953) M.L.J. 231 the Court of appeal held that it was convenient in cases of claims for loss of expectation of life if the basis of calculating awards under section 8 of the Civil Law Ordinance (now section 12 of Cap. 24) were fully set out and the award to each dependant calculated separately. This was affirmed by the Privy Council in (1955) M.L.J. 201 when the case went before the Judicial Committee on Appeal. See also Liew Soon Oi v. Yap Fui Thong & Anor., (1956) M.L.J. 181. In assessing damages and following the principle as to quantum of damages as laid down in Benham v. Gambling, (1941) A.C. 157, it should be borne in mind that the value of money has fallen very much since that case was decided. See Seow Seng Choon v. Yam Kim Chye & Anor., (1952) M.L.J. 244, C.A. and Tham Kwa Chin v. Choong Hoong Sum, (1954) M.L.J. 161.]

Case referred to:—

(1) *Davies & Anor. v. Powell Duffryn Associated Collieries Ltd.*, (1942) A.C. 602.

DAMAGES.

J. L. P. Harris for the appellant.

N. A. Christopher for the respondents.

Whyatt C.J.: — The judgment I am about to read is the judgment of Knight J., and myself. The appellant appeals to this Court from a judgment of the learned trial Judge in which he was found to have been 80% to blame for an accident which occurred on the highway at about 8.15 p.m. on 20th August 1954 between a motor car, which the appellant was driving, and a bicycle which was being ridden by one Thong Ah Woh. Mr. Thong died as a result of injuries he received in the accident and the learned trial Judge found that he too had been guilty of negligence, which was assessed at 20% — a decision from which the respondents (as Administratrix and Co-Administratrix of the estate of Thong Ah Woh, deceased) cross appeal. The appellant also appeals against the award of $35,672 damages which was assessed on the basis of the parties being responsible for the accident in the proportion of 80% to 20%.

The accident took place in Upper Aljunied Road on a dark night, though the road was partly illuminated by some electric lights which were burning in the Depot of the old Singapore Traction Company. It is common ground that the bicycle and the motor car were proceeding in the same direction and that after the collision the lamp of the cycle was found lying a distance of 6 feet 6 inches from the left hand side of the road whilst the cycle itself was lying with its nearest point some 5 feet 5 inches from the same verge. The road was dry at the time of the accident; the brakes of the appellant's car were efficient and he admitted that he was driving with his head lights on at a speed of about 25 — 30 miles per hour when his car came into collision with the cyclist. After the accident the appellant, very properly, stopped his car and aided by his passenger, a Mr. Balasingham, picked up the injured man and took him to the General Hospital where, unfortunately, he later died.

In his defence the appellant denied negligence and stated that as his car was about to overtake the cyclist and whilst it was some 10 feet from the car,